C-357-817
INVESTIGATION
Public Document
SManiam: Grp1Off1

MEMORANDUM

DATE: September 23, 2002

TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: **Issues and Decision Memorandum: Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina**

BACKGROUND

On March 4, 2002, the Department of Commerce ("the Department") published the preliminary determination in this investigation. See Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 67 FR 9670 (March 4, 2002) ("Preliminary Determination"). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Comment 1: Appropriate AUL for Siderar
Comment 2: Application of the "Same Person" Test
Comment 3: Specificity of Benefits Conferred During Privatization Process
Comment 4: Reintegro

Comment 5: Committed Investment
Comment 6: Equity Infusions
Comment 7: Exemption from Value Added Tax on Transfer of Assets
Comment 8: Exemption from Stamp Tax
Comment 9: Assumption of Voluntary Retirement/Severance Liabilities
Comment 10: Assumption of Environmental Liabilities
Comment 11: Appropriate Discount Rate for Non-Recurring Subsidies

METHODOLOGY AND BACKGROUND INFORMATION

I. Corporate History

SOMISA was founded fifty years ago as Sociedad Mixta, a partly private and partly state-owned company. It began operations in 1948. See Memorandum to Susan H. Kuhbach, "Siderar Verification Report," dated June 7, 2002, at 5 ("Siderar Verification Report"). In the 1950s and 1960s, the Government of Argentina ("GOA") began to take over more of the company with the result that the company's payroll grew larger and the company sustained huge losses. Id.

In the late 1980s, after a period of hyperinflation, the National Congress approved a general law of administrative reforms aimed at ending the GOA's intervention in companies (Law 23,696). Id. This law established the general procedures for privatization of state-owned companies, and addressed breakups and mergers, the creation of new companies, assumption of the companies' liabilities, and assistance to be offered in the privatization process. Id. In 1992, the terms of SOMISA's privatization were implemented under Decree 1144/92. See Memorandum to Susan H. Kuhbach, "Government of Argentina Verification Report," dated June 7, 2002, at 12 ("Government Verification Report").

Generally, in the privatizations that were carried out, a "business unit" was created to receive the productive assets being sold. Id. The creation of this "business unit" allowed the GOA to create a company in which the purchaser could easily evaluate the company's value, with the goal of obtaining the best price possible for the company being sold. Id. Following the privatization of a company, the GOA liquidated the remaining state-owned assets. Id.

In the case of SOMISA, the GOA created a business unit called Nueva Siderurgica (later renamed APSA) to receive the productive assets of SOMISA, as well as debts incurred after January 1, 1992. Nearly eighty percent of APSA was to be privatized. In July 1992, the Ministry of Defense authorized the bidding conditions, and an official notice was published in the United States, Argentina, and various other countries (see Siderar Questionnaire Response, dated December 21, 2001, at Exh. 47 ("Siderar QR").

The bidding process for APSA started with the GOA contracting independent advisors (Salomon Brothers and an Argentine investment bank) to study the company to be privatized and propose a privatization process See Siderar Verification Report at 5. The advisors then organized the

relevant data to market the company internationally, with the objective of obtaining the largest number of possible bidders. Id. The advisors organized an international marketing campaign in which bidding information was sent to over 100 companies around the world. See Government Verification Report at 5. The advisors were also charged with setting a value for APSA. Id. This value was subject to GOA approval – however, the GOA accepted the price suggested by the advisors (i.e., $140 million). This amount was set as the minimum bid price. See Siderar Verification Report at 6.

The bidding process had two stages. First, the quality/condition of the bidder was assessed based upon the bidder's technical and asset condition. Id. at 5. This step "qualified" the bidders. Second, the company was sold to the highest qualified bidder. Id. at 5-6. Three companies were deemed qualified bidders: Propulsora, Acindar, and a Mexican company. Between July and September 1992, Propulsora attempted to organize a consortium to bid on APSA. Id. at 6. In the end, Acindar joined the Propulsora consortium and the Mexican company dropped out of the bidding. Id.

Propulsora's own estimates and independent studies valued 100 percent of APSA at something more than the minimum bid price set by the GOA for eighty percent of APSA (i.e., $140 million), and were based on a discounted cash flow analysis. Id. At verification, we reviewed a Morgan Stanley report which, based on a discounted cash flow analysis and taking into account expected capital expenditures, estimated the value of 100 percent of APSA at $194 million. Id. The final bid made by Propulsora was higher than the minimum bid price set by the GOA for the eighty percent of APSA that was to be sold. Id. Propulsora's bid was selected as the winning bid.

Just prior to the transfer of shares to Propulsora, as laid out in the bidding terms, the productive assets of SOMISA (i.e., the plate rolling mill located in SOMISA's General Savio Plant) were transferred to APSA. See Siderar QR at Exh. 12. Also in accordance with the bidding terms and Decree 1144/92, SOMISA's monetary debts were retained by SOMISA (i.e., SOMISA's debts were not transferred to APSA and remained with SOMISA). Id. Finally, per the bid terms, the planned merger of APSA with Propulsora following the privatization was presented to the GOA. See Siderar Verification Report at 6. On November 26, 1992, the shares of APSA were sold to Propulsora.

In July of 1993, approximately 7 months after the purchase of APSA, Propulsora merged with Aceros Revestidos S.A., Bernal S.A., Sidercom S.A. and APSA to form Siderar.

II. Change in Ownership

In the Preliminary Determination, we did not make a finding regarding whether Siderar S.A.I.C ("Siderar") is the "same person" as the pre-privatization company, Sociedad Mixta Siderurgica Argentina ("SOMISA")/Aceros Parana S.A. ("APSA"). This is because we preliminarily determined that the AUL period was 8 years and the 1992 change-in-ownership occurred prior to

the allocation period. For the final determination, we are using a 12-year, company-specific AUL (see "Allocation Period" section and Comment 1 below). Therefore, we must now examine the 1992 change in ownership.

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit ("CAFC") in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g granted in part (June 20, 2000) ("Delverde III"), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix ("GIA").[1] The CAFC held that "the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government." Id., 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the CAFC's decision in Delverde III, and also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this final determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale

---

[1] Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993).

person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Based on our examination of the facts below, we find that Propulsora purchased APSA as part of a business plan that promptly eliminated a considerable portion of APSA's operations. It appears that Propulsora incorporated only certain of APSA's assets into a larger company. Consistent with its divestiture of APSA's assets, and pursuant to its business plan, Propulsora did not maintain APSA's name, and fundamentally changed its management, Board of Directors, product mix, suppliers and customers, and workforce. Therefore, based on the totality of the facts and circumstances surrounding the sale of APSA, we find that Siderar, which now incorporates only a portion of APSA's original assets, is not the same person as the GOA-owned company that produced steel prior to the privatization. Consequently, the subsidies bestowed on SOMISA/APSA prior to the November 1992 privatization are not attributable to respondent Siderar.

The "Same Person" Test

As noted in the "Corporate History" section above, prior to November 1992, the GOA owned SOMISA. Pursuant to a decision to privatize the company, the GOA transferred all of SOMISA's productive assets to APSA, a corporate shell that was the subject of the privatization. A significant portion of SOMISA's debt, however, was left in SOMISA, a company that then entered into liquidation. Following the transfer of SOMISA's assets into APSA, the GOA sold APSA to Propulsora through the sale of shares in November 1992. Approximately 7 months later, Propulsora (along with APSA) merged with several other private companies to form Siderar.

In light of these events, the following is an analysis of the factors of the "same person" test:

1. Continuity of General Business Operations

A significant portion of APSA's general business operations was not maintained after the integration of APSA's assets into Propulsora. Consistent with Propulsora's business plan, only some of APSA's assets were integrated into the business operations of Propulsora. After shutting down and scrapping/selling nearly fifty percent of the assets purchased, Propulsora refocused APSA's remaining assets on Propulsora's (and not SOMISA's) traditional business. In addition, Propulsora did not use the name "SOMISA" in the sale of its products or hold itself out to be SOMISA.

2. Continuity of Production Facilities

Pursuant to its business plan following the purchase of APSA, Propulsora closed a significant

number of APSA's production lines. Nearly fifty percent of the equipment purchased in the privatization was scrapped. Siderar also shut down the long products production lines and focused solely on flat rolled production, discontinued a billet mill and a rails and structural mill, and removed all of APSA's equipment that produced plate (redirecting production to coils, the production focus of Propulsora prior to its purchase of APSA). It appears that Propulsora knew these changes would need to be made when it purchased APSA, indicating that it was only interested in certain of the assets under APSA's ownership.

3. Continuity of Assets and Liabilities

Few of APSA's assets continued after the integration of APSA into Propulsora. Some liabilities were eliminated prior to the purchase, and certain assets of SOMISA were not transferred into APSA. Of the assets that were transferred, Propulsora quickly divested more than fifty percent of these assets in the months following the acquisition.

4. Retention of Personnel

Few APSA personnel were retained by Propulsora. With regard to employees, Propulsora eliminated a substantial number of APSA workers within the months following the transaction. With regard to management, Propulsora replaced all of APSA top management with its own team that assumed control immediately after the sale. With regard to the Board of Directors, only two of APSA's original Board members remained on the Board after the acquisition.

III. Subsidies Valuation Information

A. Allocation Period

In the Preliminary Determination, we used an 8-year AUL to allocate Siderar's non-recurring subsidies. 67 FR at 9671. The petitioners commented that: 1) Siderar incorrectly calculated its company-specific AUL by using net asset values instead of gross asset values; 2) even correcting for the use of net asset values, the company-specific AUL is distorted because of hyperinflation in certain years; and 3) following the Department's practice would mean that Siderar's non-recurring subsidies would be allocated over the 15-year AUL from the IRS Tables. We agree that Siderar did not calculate its AUL correctly. However, we do not agree that, after correcting for the use of net asset values, the AUL is still distorted. Nor do we agree that the Department's practice leads to the use of the 15-year AUL from the IRS Tables. For the reasons stated in Comment 1 below, for the final determination, we allocated Siderar's non-recurring subsidies over its company-specific AUL of 12 years.

B. Equityworthiness and Creditworthiness

Because the GOA's equity infusions in SOMISA and the 1992 assumption of debt occurred prior to the change in ownership of SOMISA, any possible benefits from these actions would not

confer a countervailable subsidy on Siderar. Therefore, we have not examined the alleged unequityworthiness or uncreditworthiness of SOMISA.

Moreover, Siderar did not receive any other allocable, non-recurring subsidies, loans, or loan guarantees in 1992 that would benefit it in the POI. Therefore, we did not examine the creditworthiness of post-privatization APSA or its purchaser, Propulsora, in 1992.

ANALYSIS OF PROGRAMS

I. Program Determined To Be Countervailable

Reintegro

In the Preliminary Determination, we found that the Reintegro program was not countervailable because 1) the GOA has appropriately examined the actual inputs involved in the production of the subject merchandise and 2) Siderar's actual incidence of indirect tax was higher than the Reintegro rate. 67 FR at 9672-73.

For the final determination, for the reasons stated in Comment 4 below, we find that, although the GOA does have a system in place to examine the actual inputs involved in the production of the subject merchandise, the amount of the rebate exceeded Siderar's actual incidence of cumulative, prior-stage, indirect tax and final stage tax. Thus, the Reintegro provides an excessive remission of cumulative, prior-stage taxes in the amount of 0.87 percent.

However, for the reasons stated in Comment 4, we also find that a program-wide change occurred after the POI and before the preliminary determination in this investigation which reduced the Reintegro rate to 3.5 percent. This rebate amount is below Siderar's actual incidence of cumulative, prior-stage, indirect tax and final stage tax. Thus, with the lowering of the rebate, the Reintegro no longer provides an excessive remission of cumulative, prior-stage indirect taxes and final stage tax.

Accordingly, for the final determination, pursuant to 19 CFR 351.526(c), we find that Siderar's net countervailable subsidy rate is 0.00 percent ad valorem.

II. Programs Determined To Be Not Countervailable

A. Zero Tariff Turnkey Bill

In the Preliminary Determination, we found that this program was de facto specific based on what appeared to be the distribution of benefits for the years 1996/1997 only, and not for the year the benefits were approved and for the prior three years (as requested in our original questionnaire). 67 FR at 9671-72. At verification, we were able to clarify our understanding of the reported data. See Memorandum to Susan H. Kuhbach, "Government of Argentina

Verification Report," dated June 7, 2002, at 3 and Exhibit G-1a-c ("Government Verification Report').

Specifically, we obtained information showing that this program was administered under two Decrees (502/95 and 256/00), with Decree 256/00 repealing the provision in Decree 502/95 which allowed for the import of turnkey plants. Id. at 3. Moreover, we examined the distribution of benefits under both these Decrees (which spanned the years 1996 through 2001). Id. at Exhibit G-1a-c. Analysis of this information, and an examination of the law providing for this program, demonstrates that 1) the benefits under this program were not expressly limited to an enterprise or industry, 2) neutral, objective criteria or conditions governing eligibility were established, 3) the actual recipients were not limited in number, 4) no industry or enterprise was the predominant user, 5) no industry or enterprise received a disproportionately large amount of the subsidy, and 6) the authority providing the subsidy did not exercise discretion in a manner indicating that an enterprise or industry was favored. Accordingly, we find that this program is neither de jure nor de facto specific, as described in section 771(5A)((D).

Based on the above, for the final determination, we find this program to be not countervailable.

B. "Committed Investment" Into APSA

In the Preliminary Determination, we found that the committed investment was not countervailable because we determined that the GOA did not forgo any revenue and, even if there was a countervailable amount under any other theory, the amount would have been too small to raise the preliminary subsidy rate above de minimis. 67 FR at 9672. The petitioners commented that the committed investment should be countervailable because it is revenue forgone by the government, it is a sale for less than adequate remuneration, or the government directed or entrusted the purchaser to provide a subsidy. For the reasons stated in Comment 5 below, we do not agree and continue to find the committed investment not countervailable.

III. Programs Determined To Be Not Used

In the Preliminary Determination, we found the following programs were not used because, as a result of the AUL used in the Preliminary Determination, any benefits would have expired prior to the POI. 67 FR at 9673. For the final determination, despite the use of a different AUL, we continue to find the following programs not used because 1) they were received by an entity different from respondent Siderar (as described in the "Change in Ownership" section above) (equity infusions, debt forgiveness, VAT exemption, and assumption of voluntary retirement/severance liabilities), 2) any benefits were conferred upon the owner of the company, rather than the company itself (stamp tax exemption), or 3) no benefits were received (assumption of environmental liabilities):

A. Equity Infusions
B. Assumption of Debt and Liquidation Costs

C. Subsidies Under Decree 1144/92

IV. Program Determined To Be Terminated

Pre- and Post-Export Financing

In the Preliminary Determination , we found this program to be not used. 67 FR at 9673. At verification, we learned that the Argentine Central Bank was involved in pre- and post-export financing by providing guarantees on private loans. See Government Verification Report at 11. However, in 1992, the Central Bank was prohibited by law from loan-making activities. Id.

Any loans that were guaranteed through this program were short-term loans that would be been repaid well before the POI. Id. Therefore, no company can benefit from this program any longer. We also verified that, in fact, Siderar did not receive any benefits under this program. See Siderar Verification Report at 19.

Accordingly, we find that this program has been terminated and that Argentine companies, including Siderar, can no longer benefit from this program.

ANALYSIS OF COMMENTS

Comment 1: Appropriate AUL for Siderar

Petitioners' Argument: The petitioners first argue that Siderar's AUL calculation must be rejected because Siderar used net rather than gross asset values. The petitioners assert that the Department's regulations direct it to calculate AUL by dividing the aggregate of the annual average gross book values of a respondent's depreciable productive fixed assets by the respondent's aggregate annual charge to accumulated depreciation. The petitioners contend that the Department has found the use of net asset values to be justification for dismissing a company-specific AUL (citing to Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany, 62 FR 54,990 (October 22, 1997)). Therefore, the petitioners argue that the Department must reject Siderar's 8-year calculation in favor of a calculation consistent with the Department's regulations.

Second, the petitioners claim that Siderar's data fails to meet the criteria for establishing a company-specific allocation period because of certain variations. According to the petitioners, accounting policies specific to inflationary periods, as existed in Argentina from 1991 through 1992 according to IMF data, have frequently distorted Siderar's asset and depreciation values. These distortions, the petitioners argue, violate the conditions for overcoming the presumption to use the AUL in the IRS Tables

Third, the petitioners contend that Siderar, in a previous case, requested the use of the 15-year AUL from the IRS Tables because of the difficulties in calculating a company-specific AUL due

to hyperinflation (citing to Cold Rolled Carbon Steel Flat-Rolled Products From Argentina: Preliminary Results of Countervailing Duty Administrative Review, 62 FR 38527, 38260 (July 17, 1997) ("1997 Cold-Rolled Prelim")).

The petitioners contend that the Department's practice treats previously established allocation periods for particular subsidies which have already been countervailed as inviolable in later decisions involving the same product, irrespective of the source (citing to Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 63 FR 13626, 13627 (March 20, 1998) ("Israel IPA"); Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 65 FR 48479, (August 8, 2000)). The petitioners maintain that the only "same product" case where the Department re-amortized subsidies involved the extenuating circumstances of a remand determination and two companies being "collapsed" (citing to Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review, 62 FR 18744 (April 17, 1997)).

The petitioners argue that the Department ignored its policy in this investigation by re-amortizing over 8 years several subsidies previously allocated over 15 years with respect to cold-rolled steel as was done in Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review, 62 FR 52974 (October 10, 1997). The petitioners claim the Department was in error in the Preliminary Determination by stating that at the time of 1997 Cold-Rolled Prelim the Department did not to invite respondents to calculate company-specific AULs. According to the petitioners, the Department did invite SOMISA/Siderar to supply company-specific information in that case, but the respondent declined. Also, the petitioners contend that the Department's assertion that its regulations direct re-amortizing subsidies in the context of this proceeding is untrue as illustrated in past proceedings and in the Department's arguments before the Court of International Trade ("CIT") in Allegheny Ludlum Corp., et al v. United States, 182 F. Supp. 2d 1357 (CIT 2002) ("Allegheny Ludlum").

The petitioners argue that the Department's policy against re-amortizing non-recurring subsidies applies to all affected segments of the recipient enterprise's production. The petitioners assert that the Department has no basis for re-amortizing a previously allocated subsidy, as this position contradicts all previous "across products" cases (citing to e.g., Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review, 66 FR 20425 (April 23, 2001)); Final Affirmative Countervailing Duty Determination: Stainless Steel Bar From Italy, 67 FR 3163 (January 23, 2002)). Finally, the petitioners maintain that the Department's statute does not permit the amount of a subsidy, including the allocated benefit stream, to be reevaluated based on post-bestowal events (citing to GIA, 58 FR at 37263).

Respondent's Argument: The respondents agree with the petitioners' adjustments to achieve a gross value of its depreciable assets. The respondents did not comment on other issues.

Department's Position: We agree with the petitioners that Sider inappropriately used net asset

values (as opposed to gross asset values) in calculating its AUL. According to 19 CFR 351.524(d)(2)(iii), a company-specific AUL is calculated by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation. To correct this error by Siderar, we added Siderar's annual accumulated depreciation back into the reported net book values, to arrive at gross book values. In doing so, we determined Siderar's company-specific AUL to be 12 years.

We note that, because we find SOMISA/pre-privatization APSA to not be the same person as respondent Siderar (see "Change in Ownership" section above), we have not included SOMISA's asset values and depreciation in our calculation of Siderar's AUL. Although, we normally use ten years of data to determine an AUL, the use of a ten-year period is not required under the regulations (see Countervailing Duties; Final Rule, 63 FR 65348, 65397 (November 25, 1998) ("1998 CVD Regulations")) and, based on our past practice, this time frame may be modified where warranted. Accordingly, in calculating the AUL for Siderar, we used data from Propulsora/Siderar from 1992 through the POI (i.e., the past nine years). We find that, for the purposes of this investigation, nine years of data provides a sufficient and reliable basis for calculating Siderar's company-specific AUL.

We disagree with the petitioners that we should use the presumed 15-year AUL from the IRS Tables. Prior to 1995, the Department allocated non-recurring subsidies over the AUL from the IRS Tables as an irrebuttable presumption. In 1995, in British Steel plc. v. United States, 879 F. Supp. 1254 (CIT 1995) ("British Steel"), the CIT found that the Department's use of an AUL from the IRS Tables conflicted with Congress' intent because it did not reflect the actual commercial and competitive benefit of the subsidies to the recipient of the subsidy. In the redetermination pursuant to the remand in British Steel, the Department abandoned the use of an AUL from the IRS Tables altogether in favor of allowing companies to calculate company-specific AULs. See British Steel plc v. United States, 929 F. Supp. 426, 433-35 (CIT 1996) ("British Steel II"). This company-specific allocation methodology was affirmed by the CIT. Id. at 439.

In applying this new methodology in cases following British Steel II, the Department found that a company-specific AUL allocation methodology, by itself, was more burdensome than envisioned in some cases. See 1998 CVD Regulations, 63 FR at 65396. As a result, in the 1998 CVD Regulations, we again incorporated the IRS Tables into our allocation methodology because of their consistency, predictability, and simplicity. Id. Our regulations require that we presumptively use the AUL listed in the IRS Tables, unless a party claims and establishes that: 1) the IRS Tables do not reasonably reflect the recipient company's AUL or the country-wide AUL for the industry under investigation; and 2) the difference between the two AULs is significant (i.e., different by one year or more). 19 CFR 351.524(d)(2)(i) and (ii). Where the presumption is rebutted, we will use the company's own AUL or the country-wide AUL as the allocation period. Id.

Parallel with the adoption of this regulation, we developed a practice of relying on previously calculated AULs, i.e., once a subsidy had been allocated over a particular AUL, we used the same AUL for that subsidy in later segments of the same proceeding and in other proceedings involving the same company (absent evidence of changed circumstances regarding the initial AUL calculation). See, e.g., Certain Carbon Steel Products from Sweden: Final Results of Countervailing Duty Administrative Review, 62 FR 16549, 16549-50 (April 7, 1997) ("Swedish Certain Steel") (used the same AUL in later segments of the same proceeding); Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990 (October 22,1997) (used the same AUL across proceedings involving the same subsidy and company).

In Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55808 and accompanying Issues and Decision Memorandum at Comment 1 (August 30, 2002), we stated our refined practice of relying on previously calculated AULs in light of several considerations. *First*, our regulation is clear in requiring that the Department give parties in each investigation the opportunity to rebut the presumption in favor of the IRS Tables. This is true even if parties previously have not attempted to rebut, were unsuccessful in rebutting, or never had the opportunity to rebut the presumption. *Second*, once the presumption to use the AUL from the IRS Tables has been rebutted and a particular subsidy has been allocated using a company-specific or country-wide AUL, we need not revisit the AUL determination even in subsequent proceedings (unless there is evidence that we miscalculated the initial AUL). This is because the previously calculated, company-specific AUL would be based on data more contemporaneous with the bestowal of the subsidy and, hence, would provide a more accurate measure of the benefit than newer data. See Certain Cut-to-Length Carbon-Quality Plate from France, 64 FR 73277, 73293 (December 29, 1999).

Third, we do not believe we can change the AUL used for allocating a particular subsidy in different segments of the same proceeding. This is because the Department amortizes a subsidy equally to each year of the allocation period using the AUL set in the investigation. If we were to decrease the AUL in a later segment of the same proceeding, we would find that not enough had been countervailed in preceding years (under-countervailing). Similarly, if we increased the AUL in a later segment of the same proceeding, we would find that too much was countervailed in preceding years (over-countervailing). Either outcome would violate our statutory obligation to impose countervailing duties in the amount of the net subsidy. Also, the Department has stated that it would be unreasonable and impractical to reamortize subsidies in different segments of the same proceeding. See, e.g., Israel IPA, 63 FR at 13627.

The reasons for not changing an AUL within a proceeding do not, however, apply across proceedings, i.e., when the Department is investigating the same subsidy to the same company, but in a different proceeding. In these situations, because our regulation requires that we allow the presumption in favor of the IRS Tables to be rebutted in each investigation, and because a different AUL in a different proceeding does not lead to over or under countervailing, we will not rely on the previously-calculated AUL, unless that AUL was a company-specific or country-wide

AUL which differed significantly from the AUL from the IRS Tables and was calculated closer in time to the bestowal of the subsidy.

In light of the above considerations, we refined our AUL selection methodology to follow these steps:

(1) Establish the AUL from the IRS Tables for the industry under investigation in each investigation;
(2) If the presumption to use the AUL from the IRS Tables has not previously been rebutted for a subsidy, with a *significantly-different, company-specific or country-wide AUL*, we will evaluate in each investigation any evidence that a company-specific AUL varies significantly from the AUL in the IRS Tables. This is true even if parties previously have not attempted to rebut, were unsuccessful in rebutting, or never had the opportunity to rebut. If the difference is significant (i.e., different by one year or more), we will allocate the subsidy over the company-specific or country-wide AUL. If not, we will allocate the subsidy over the presumed AUL from the IRS Tables.
(3) Once the presumption to use the AUL from the IRS Tables has been rebutted, and an untied subsidy is allocated over a *significantly-different, company-specific or country-wide AUL*, we will continue to allocate that subsidy over the same AUL in future proceedings for the same respondent (unless there is evidence that we miscalculated the initial AUL).
(4) In later segments of the same proceeding, *regardless of how that previous AUL was determined*, we will continue our longstanding practice of allocating the subsidy over the previous AUL.

The petitioners are correct that in a previous case, Siderar was provided the opportunity to rebut the use of the AUL from the IRS Tables. However, under the practice outlined above, we find that the regulations require the opportunity to rebut the presumption in each investigation, unless a significantly-different, company-specific AUL was already determined for certain subsidies. Although Siderar was provided the opportunity to rebut the use of the AUL from the IRS Tables in the 1997 proceeding on cold-rolled steel, it did not do so. Therefore, we are required to give Siderar another opportunity in this investigation to rebut the use of the AUL from the IRS Tables.

The petitioners also argue that Siderar's company-specific AUL (even after it was corrected through the use of gross asset values) is distorted in certain years because of hyperinflation and, therefore, not usable. We do not agree. Although it is true that hyperinflation can affect the value of assets, any increase in the value of assets should have a corresponding affect on the amount of depreciation claimed. There is no record evidence that this is not the case in this investigation. Consequently, we find that hyperinflation has not distorted the company-specific AUL.

Comment 2: Application of the "Same Person" Test

Respondents's Argument: Siderar contends that it is not the "same person" as SOMISA for the following reasons. *First*, Siderar argues that the statute requires a finding that Siderar received a benefit as a prerequisite to countervailability. Specifically, the respondents assert that, in Delverde III, the CAFC held that the statute does not allow the use of a per se test or an irrebuttable presumption. Siderar also refers to several recent CIT decisions for the proposition that the Department is required to examine whether the entity under investigation (i.e., the purchasers) received a benefit following a change in ownership (citing to Allegheny Ludlum; GTS Industries S.A. v. United States, 182 F.Supp. 2d 1369 (CIT 2002) ("GTS"); Acciai Speciali Terni S.p.A., Slip Op. 2002-10 (CIT 2002) ("AST"); ILVA Lamiere E Tubi S.R.L. v. United States, 196 F. Supp. 2d 1347 (CIT 2002) ("ILVA")).

Second, Siderar argues that the WTO obligations of the United States require a finding that Siderar received a benefit as a prerequisite to countervailability. Specifically, Siderar asserts that the CAFC decision in Delverde III conforms with the WTO obligations of the United States because the CAFC noted that the WTO panel's decision in Certain Hot-Rolled Lead and Bismuth Carbon Steel Products, WT/DS/138/R (December 23, 1999) was consistent with its holding.

Third, Siderar argues that the privatization transaction demonstrates that Siderar did not benefit from any of the alleged subsidies. Specifically, Siderar claims that the privatization transaction here involved the creation of a "business unit" comprised of certain of SOMISA's assets and liabilities, the transfer of the business unit to a newly-created company (Nueva Siderurgica, later APSA), and the selling of APSA's shares. Siderar asserts that the sale of APSA was carried out through a national and international competitive bid and that, once the assets and liabilities to be transferred to APSA were defined, a valuation of the company was conducted by Salomon Brothers and Merchant Bankers Asociados S.A. Importantly, according to Siderar, the base price required by the GOA was established based on the valuation studies.

On November 26, 1992, according to Siderar, two events occurred: 1) the business unit (along with certain liabilities) was transferred to APSA; and 2) shares in APSA representing ownership in the assets specified in the definition of the business unit were transferred to Propulsora.

These facts are significant to the Department's analysis, Siderar claims, because 1) they demonstrate that the transaction was a competitive bidding process conducted with full transparency; 2) the transaction belies any simple classification as either a "sale of shares" or a "sale of assets;" and 3) there can be no suggestion that APSA, Propulsora, or Siderar are merely SOMISA under a different name (instead Siderar is part of the Techint Group and is the end result of the July 1, 1993 merger of Propulsora and other companies of the Techint Group, namely, Aceros Revestidos S.A., Bernal S.A. and the then recently acquired companies Sidercom S.A. and APSA).

Siderar notes that after the merger was completed, Propulsora had operations in eight different

locations and is, thus, a different entity that reflects the combined assets and liabilities of the merged entities - an entity purposefully established after the take-over and merger. Moreover, Siderar notes that the Department has repeatedly recognized the distinct and competitive status of Propulsora and SOMISA in countervailing duty orders (citing to Cold-Rolled Carbon Flat Steel-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 18015 (April 26, 1984). To find that these companies are now the "same," according to Siderar, would be inconsistent with our past treatment of these two companies.

Fourth, Siderar argues that even if the Department applies its "same person" test, the record in this case demonstrates that neither Propulsora nor Siderar is the same person as SOMISA. Regarding general business operations, Siderar claims that: 1) APSA did not, at any time under government ownership, produce steel. Only after Propulsora's purchase of APSA did it consist of a business unit that allowed it to manufacture steel products. Thus, the change in name was immediate; 2) seven months after Propulsora acquired SOMISA's assets, and pursuant to its initial business plan at the time it acquired APSA, Propulsora consolidated its main operations, merging them into a single company; and 3) at no time after acquiring APSA did Siderar hold itself out as a continuation of SOMISA.

Regarding the continuity of business operations, Siderar claims that: 1) it appointed its own board of directors for APSA and a new management team took control of the operations; 2) it moved to implement its existing end-user oriented marketing stategy on APSA's operations; 3) it reorganized the assets it purchased into six different business units. In addition, Siderar scrapped approximately 50 percent of all equipment purchased from SOMISA because it was either inefficient or obsolete.

Regarding the production operations, Siderar claims that its aim was to concentrate exclusively on the production of flat-rolled products and, therefore, it discontinued all long-product operations (either scrapping or selling these operations). As a result of these changes, Siderar argues, unlike SOMISA, it no longer had the capacity to produce long products or plate. Accordingly, Siderar contends that Siderar did not carry on the production operations of SOMISA.

Regarding the continuity of assets and liabilities, Siderar argues that the assets and liabilities that comprise Siderar today are not the same as the assets purchased through the bidding process in 1992. In particular, Siderar argues that it completely shut down and sold (or scrapped) a number of the purchased assets, disposed of the production of long products and plate, and upgraded a significant number of assets purchased. Siderar asserts that if the Department were to find the same person test was met whenever a post-sale entity retained assets from the pre-sale entity, the Department's test would be meaningless. This is because, according to Siderar, there will rarely, if ever, be a situation where an entity disposes of all assets acquired in a transaction. In addition, Siderar argues that, because the bidder who would purchase SOMISA's assets through the acquisition of APSA's shares would not step into the shoes of SOMISA, it is impossible to relate

Propulsora/Siderar's liabilities to those of SOMISA.

Finally, regarding the retention of personnel, Siderar argues that Propulsora/Siderar used its own management team and board of directors to mangage the assets it acquired in the privatization. Siderar notes that Propulsora/Siderar also reduced its workforce continuously throughout the year following the privatization. Notably, Siderar assrets that SOMISA had 13,970 employees, but at the time Propulsora acquired SOMISA's assets, there were only approximately 7,500 employees.

In countering the petitioners' arguments (stated below), Siderar argues that the privatization was not just a stock sale, but rather, a transfer of shares that was accompanied almost simultaneously by a transfer of assets into APSA, a new corporation with no existing assets. Because APSA itself never operated as a steel producer prior to its sale (and did produce steel after its sale), it was not the "same person" after the privatization.

Moreover, Siderar contends that the petitioners do not distinguish Acciai Speciali Terni S.p.A., et al. v. United States, CIT Slip Op. 02-51 (June 4, 2002) ("GOES") from other CIT decisions not favorable to their interpretation of the "same person" test (referring to GTS; Allegheny Ludlum; ILVA, and AST). Thus, Siderar claims, the courts have yet to devise a definitive interpretation of the test, and the petitioners cannot proffer a methodology that has repeatedly been ruled inconsistent with the statute. Contrary to the petitioners' position, Siderar believes the "same person" test does not require that every instance of privatization-related change must be distinguished from "natural business evolution." Under the petitioners' version of the "same person" test, Siderar asserts, the only way to find a different person is for the purchaser to, immediately after the purchase, sell all assets, fire all employees, and go out of business. Thus, according to Siderar, the petitioners' interpretation of the test leads to absurd results.

When properly applied, Siderar continues, all four factors of the test show that respondent Siderar is not the "same person" as SOMISA. First, APSA never produced steel prior to its purchase, but did after its purchase. Second, Siderar made operational changes to distinguish itself from SOMISA, including renaming the company, eliminating more than half of SOMISA's customers and over 80 percent of its suppliers, outsourcing certain inputs and services, and reorganizing SOMISA's assets into six different business units serving different consumer sectors. In terms of personnel, Siderar argues that it instituted a 46 percent immediate reduction of the workforce by the time the transaction was concluded (which included replacement of SOMISA's management and board of directors). Third, in terms of production, Siderar argues that it used the acquired assets differently from SOMISA. Essentially, Siderar claims it discontinued its long-product operations and sold or scrapped all related facilities. Additionally, Siderar maintains, even the production of flat products differed from that under SOMISA due to substantial improvements in equipment, process, and control. Fourth, Siderar argues that continuity of assets and liabilities was limited because it sold, scrapped, or improved many of SOMISA's assets, and SOMISA's liabilities did not transfer entirely to Siderar.

Siderar also contends that the GOA's assumption of debt was not part of the transfer of shares

transaction. Specifically, Siderar argues that the laws authorizing the debt assumption were enacted well before the purchase of APSA's shares. Therefore, according to Siderar, to the extent there was any benefit, it was conferred on SOMISA long before the transfer of the APSA to Propulsora. Siderar argues that the petitioners have failed to demonstrate how the GOA's assumption and consolidation of SOMISA's debts conferred a financial contribution and a benefit to the buyer of APSA's shares. Siderar asserts that because the debt was never part of APSA, it never affected the valuation of the shares ultimately purchased by APSA.

Finally, Siderar argues that, despite the petitioners' contrary arguments, the record demonstrates that the privatization was at fair market value ("FMV"). Specifically, Siderar argues that: 1) the bidding process was not limited, but instead widely promoted; 2) the workers' equity program is irrelevant to the determination of whether APSA was purchased at FMV because the shares purchased under this program were Class B shares; and 3) the petitioners' argument that the purchase price was at less than FMV is contradicted by the record evidence. This is because, inter alia, according to Siderar, it actually paid more than the value of APSA as determined by Salomon Brothers.

Petitioners' Argument: The petitioners argue that subsidies bestowed during the SOMISA/APSA period conferred benefits on Siderar during the POI because Siderar is the "same person" as SOMISA/APSA. These subsidies were: 1) equity infusions and other subsidies conferred to SOMISA; 2) $1.2 billion in debt relief and other subsidies conferred to APSA as part of the privatization process; and 3) various other subsidies conferred to Siderar after privatization. The petitioners contend that the person remained unchanged throughout the period in which these subsidies were conferred. The petitioners cite to Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot Rolled Carbon Steel Flat Products From Argentina, 66 FR 10990 (February 21, 2001) ("Argentina Hot-Rolled Prelim"), in which the Department found that the same "person" survived through the three-step privatization process that began with SOMISA's reincorporation as APSA, continued through Propulsora's purchase of APSA shares in November 1992, and concluded with the merger and name change to Siderar in 1993. Essentially, according to the petitioners, the San Nicolas carbon steel manufacturer at the first stage of this process was essentially the same "person" as the San Nicolas carbon steel manufacturer at the end of the process. The removal of liabilities from APSA in the first stage did not erase prior subsidies but simply conferred a new one.

The petitioners claim that the same person survived the transfer of APSA's shares, and the subsidies conferred on it remain countervailable because a stock sale does not create a new person or extinguish prior subsidies (citing to British Steel, 879 F. Supp at 1273 (holding that the corporate entity of the subsidy recipient survives through a stock purchase, and so does the Department's authority to countervail the subsidy); GOES (holding that, although a stock purchase may change the identity of the shareholders, it does not affect the identity of the corporate entity itself; therefore, prior subsidies continue to reside in the corporation and continue to be countervailable)). Based on these precedents, the petitioners argue, the stock sale

by which Propulsora acquired APSA did not by itself create a new legal person or extinguish the subsidies.

The petitioners contend it would be a violation of the statute to find that past subsidies become non-countervailable at the moment of privatization if the privatization is accomplished at arm's length and produces a "new person." The petitioners claim that section 771(5)(F) of the Act prohibits such a per se decision (citing to S. Rep. No. 103-412, at 92 (1994) for the proposition that the purpose of section 771(5)(F) of the Act was to make clear that an arm's length sale does not automatically extinguish past subsidies).

The petitioners claim that applying the "same person" methodology upheld in GOES shows that Siderar, APSA and SOMISA were merely different names used by a single enterprise at different times, despite changes that included a revised marketing strategy, modified supplier base, new product lines and equipment, a restructured workforce, and a name change. Moreover, according to the petitioners: 1) general business operations remained the same through the SOMISA, APSA and Siderar periods, with the same purpose of producing carbon steel products at San Nicolas; 2) changing the name of the enterprise and the gradual implementation of a revised business plan and marketing strategy do not create a new legal person; 3) is not surprising that suppliers would evolve over time; and 4) it is incorrect to say that Propulsora's operations had nothing in common with those of its former government-owned competitor, because post-merger Propulsora had all the viable steelmaking assets of the pre-merger entities.

Regarding the continuity of production operations, the petitioners maintain that, although Siderar claims it scrapped old equipment, revised some production lines, and refocused production from long products to flat products, the record evidence (including the verification findings) does not show that these changes involved a substantial portion of Siderar's facilities. Moreover, it is to be expected that a company's product mix will change over time in response to customer needs and market conditions. Thus, the petitioners argue, there is no indication that the two entities before and after privatization are meaningfully different.

Regarding the continuity of assets and liabilities, the petitioners contend that there was 100 percent continuity of assets from the day before to the day after the stock purchase, while the GOA's assumption of SOMISA's liabilities was simply a new subsidy conferred on the same person. Moreover, the petitioners assert that Siderar has no legal or economic ground to recast the Department's assets test as simply a test of whether the assets are used in essentially the same manner before and after acquisition.

Finally, the petitioners argue that the personnel restructuring Siderar claims to have done is both wholly irrelevant and only to be expected as "natural business evolution." The work force reduction, according to the petitioners, amounted to only twenty-nine percent over a period of nine years, not unexpected given the time frame and especially in light of the fact that in the U.S. mills, for example, the work force has declined steeply over the same period.

The petitioners conclude that, based on all four factors of the Department's same person test, the record in the instant investigation shows that the "same person" has survived the privatization process and that prior subsidies remain countervailable.

Nonetheless, the petitioners assert, even if Siderar were found to be a different person from SOMISA/pre-privatization APSA, the $1.2 billion in debt relief continues to be countervailable because it was provided as part of the privatization and the debt would have passed through to Siderar had the GOA not assumed it at privatization. In effect, the petitioners believe, the GOA conferred the subsidy to the post-privatization entity. This view, the petitioners claim, was strongly implied by the Department in Argentina Hot-Rolled Prelim, although it was rendered moot by the "same person" finding. Further, although Argentina Hot-Rolled Prelim was determined on a facts available basis, the petitioners see no new information to contradict the finding in that proceeding. The petitioners additionally cite to a recent appellate proceeding before the WTO in which the United States takes a position similar to the petitioners' in the instant proceeding and argues that "Article 27.13 undeniably implies that subsidies preceding, but directly linked to, a privatization are actionable insofar as Article 1 is concerned" (citing to United States – Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212, First Written Submission of the United States at n. 30 (January 23, 2002)).

Finally, the petitioners contend that, even if the courts were to hold that a stock sale at FMV extinguishes prior subsidies, such a holding would offer no shelter to Siderar because the APSA privatization was not at FMV. The petitioners claim that, first, there was actually no competitive bidding, because the GOA narrowly limited the bidder pool and only one bidder, Propulsora, eventually submitted a bid. Second, the shares sold to the employees were sold for half the "market value," on a per-share basis, established by Propulsora's bid. Third, the actual value of the purchase price paid by Propulsora for its stake was lower, on a per-share basis, than either the existing assessed value, the Salomon Brothers estimate, or the Morgan Stanley estimate, and especially since the government bonds used to pay part of the price were themselves actually worth less than their face value.

In rebuttal, the petitioners claim that Siderar misconstrues the statute on the issue of change in ownership. According to the petitioners, Siderar is wrong to claim that a subsidy exists only where a financial contribution is provided to a person and a benefit is conferred on "that person." The petitioners claim that the statute does not specify to whom or for what purpose the benefit is conferred, only that it is conferred to a person within the meaning of section 771(5)(B)(i)-(iii) of the Act and with respect to the production, manufacture, or export of subject merchandise within the meaning of section 701(a)(1) of the Act. Contrary to Siderar's distorted interpretation, the petitioners argue, the statute does not focus on subsidization of owners as opposed to producers. Moreover, the petitioners contend that the statute does not support Siderar's argument that an FMV purchase extinguishes prior subsidies. A finding that prior subsidies are extinguished for this reason, the petitioners claim, is a per se determination prohibited by section 771(5)(F) of the Act.

The petitioners also assert that Siderar distorts case law on this point, saying that Siderar misreads the decision in Delverde III by attributing to it a broader application in law than is warranted by the narrower asset sale circumstances addressed by the court in that case. However, according to the petitioners, the Department's interpretation of Delverde III offers guidance in the instant investigation because it comports with standard corporate law doctrines of successor liability, under which a successor company remains legally responsible for all existing and potential liabilities if it carries on substantially the same business after the change in ownership, and especially if the change in ownership was done through a stock sale. In terms of economics, the petitioners continue, the transfer of shares and the arrival of new stockholders changed nothing about APSA's production, and did not in themselves stop the resulting entity from continuing to enjoy the lowered debt load and the prior subsidies conferred on the pre-privatization entity.

The petitioners claim that Siderar is wrong about the facts regarding the privatization process, and re-cite to Argentina Hot-Rolled Prelim wherein the Department found that the same "person" survived through the three-step privatization process, and that the removal of liabilities from APSA in the first stage did not erase prior subsidies but simply conferred a new one. The petitioners add that the Department has in the past found that a transaction which removed liabilities from a new company did not affect prior subsidies (citing to Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 809 (January 7, 1998). Moreover, the petitioners point out that the only change in ownership, which occurred in the second stage, was a stock sale that did not in itself change the legal "person," because the purchase of shares does not, as Siderar argues, represent ownership of the entity's assets but merely a claim on its earnings. Such a transaction leaves in place the same "person" that had received earlier subsidies and the subsidies remain countervailable.

Department's Position: As an initial matter, we find that the different change in ownership methodology applied in certain recent redeterminations pursuant to court remand is not relevant in this investigation. This is because we find that the "same person" change-in-ownership methodology that was applied prior to these redeterminations is in accordance with law and in conformance with the CAFC's decision in Delverde III. In several recent cases, various judges of the CIT have ruled on the Department's "same person" test. Some decisions held that this methodology was not in accordance with law and those cases were remanded to the Department for further proceedings: see Allegheny Ludlum; GTS; AST; ILVA. In another case, GOES, the judge affirmed the Department's "same person" methodology.

All of these cases, however, are subject to further appeal. Therefore, notwithstanding any arguments regarding the applicability of recent redeterminations to this investigation, until there is a final and conclusive decision regarding the legality of the Department's change-in-ownership methodology in these cases, we will continue to apply that methodology.

In addition, U.S. law, as implemented through the Uruguay Round Agreements Act, is fully

consistent with the United States' WTO obligations. See Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, Vol. 1 at 669 (1994), reprinted in 1994 U.S.C.C.A.N. 3773.

Substantively, for the reasons stated in the "Change in Ownership" section above, based on the totality of the facts and circumstances surrounding the privatization itself and the contemplated results of the privatization, we agree with Siderar that it is not the same person as SOMISA/pre-privatization APSA.

We do not agree with the petitioners that the debt relief was provided to the post-privatization entity (regardless of the outcome of the person test). Any debt relief in this case was provided when the assets were transferred from SOMISA to APSA. Thus, the debt relief was provided to either SOMISA or pre-privatization APSA. Because we find that SOMISA/pre-privatization APSA to be a different person than respondent Siderar, we find that the benefit of this debt relief is not attributable to respondent Siderar.

Comment 3: Specificity of Benefits Conferred During Privatization Process

Petitioners' Argument: The petitioners argue that the benefits conferred during privatization were specific. The petitioners maintain that the Department has consistently found large-scale capital subsidies - debt forgiveness, debt assumptions, equity infusions - to be specific (citing to Certain Cut-To-Length Steel Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review, 65 FR 13368 (March 13, 2000) ("2000 Mexican Plate")). The petitioners claim that the same debt assumption at issue here was previously found to be specific because the debt assumption was limited to the producer of the subject merchandise (citing to Argentina Hot-Rolled Prelim). The petitioners assert that the Department cannot reverse a prior finding of specificity in the absence of a clearly demonstrated change in facts or governing law.

According to the petitioners, even if the Department looks at all privatization-related debt assumptions, the limitation of benefits to government-owned companies in the process of being privatized is a limitation of benefits to an industry or enterprise or group thereof, and therefore, de jure specific. Additionally, the petitioners argue that Law 23,696 and Decree 1144/92 are not "integral linked" under the criteria listed in 19 CFR 351.502(c) because, while Decree 1144/92 is the direct legal authority for the SOMISA debt assumption, this authority is not linked to Law 23,696, a macroeconomic reform law.

If the Department examines the de facto specificity of this program, under section 771(5A)(iii)(I)-(IV) of the Act, the petitioners contend that the Department would still find this program specific because 100 percent of the benefit from this program was concentrated on a group of state-owned firms accounting for, at most, a very small percent of Argentina's economy. The petitioners contend that presumably not all public companies were privatized, and not all that were privatized obtained debt relief. Further, the petitioners argue there is also clear evidence of specificity within the universe of participants in this program given that the steel industry's amount of debt relief exceeds the industry's contribution to GDP.

The petitioners counter Siderar's argument (stated below) that subsidies limited to the state-owned sector are not per se specific. First, the petitioners contend that the program is defined as privatizing firms, a subset of state-owned firms. Second, the petitioners argue that state-owned enterprises constitute a group, so that a subsidy limited by law even to this broader category of enterprises, is de jure specific (citing to Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 49637 (September 28, 2001) ("Indonesian Hot-Rolled"); Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, 58 FR 37281 (July 9, 1993) ("Belgian Certain Steel")). Third, despite implied arguments by Siderar that specificity can exist only where the members of the favored group have shared traits, the petitioners argue that the Department has confirmed no such requirement exists. Even assuming that this requirement exists, the petitioners contend that state-owned enterprises share the common characteristic of undergoing privatization. The petitioners contend that the other cases identified by Siderar (i.e., Certain Refrigeration Compressors From the Republic of Singapore: Preliminary Results of Countervailing Duty Administrative Review, 59 FR 59749 (November 18, 1994) ("Singapore Refrigeration Compressors")) where the Department has failed to find de jure specificity are very different than facts and precedents at issue in this case.

The petitioners argue that de jure specificity under section 771(5A)(ii)(I)-(III) of the Act is met in this case. First, the petitioners argue that privatizing enterprises' eligibility for debt relief was not automatic, as Law 23,696 did not mandate the bestowal or the amount of debt relief. Second, according to the petitioners, no neutral and objective criteria were set forth in legislation. Third, the petitioners argue that no such criteria were strictly followed, as illustrated by Siderar's description that the intervenors figured debt relief based on the individual needs of the participating companies.

Respondent's Argument: Siderar argues that none of the alleged benefits relating to the privatization of SOMISA were specific. Siderar contends that benefits of Law 23,696 were provided in the majority of privatizations, which affected a large part of the Argentine economy. Siderar also claims that government assistance that is evenly distributed throughout the jurisdiction of the subsidizing authority is not an actionable subsidy (citing to the SAA at 913).

According to Siderar, the benefits of Law 23,696 were available to all public entities subject to privatization, and therefore, any benefit conferred during the privatization process cannot be de jure specific because it was not limited on its face to a sufficiently small number of entities, industries or groups thereof (citing to Singapore Refrigeration Compressors). Siderar asserts that state-owned companies comprised a substantial and important portion of the Argentine economy. Moreover, Siderar argues that there is no bright line rule that all programs limited to state-owned enterprises are necessarily de jure specific (citing to Indonesian Hot-Rolled; Belgian Certain Steel).

Siderar also argues that the benefits are not de jure specific under section 771(5A)(ii)(I)-(III) of the Act because 1) the only eligibility criterion was state-owned enterprises subject to

privatization, and, thus, eligibility was automatic, 2) the same criteria and conditions for determining the type and level of benefits were strictly followed in each privatization, and 3) these criteria were expressly dictated in Law 23,696 and in Decree 1105/89.

Siderar contends that the benefits granted under the privatization process are not de facto specific under section 771(5A)(iii)(I)-(IV) of the Act because 1) any benefits conferred on SOMISA under Law 23,696 and its implementing decrees also were conferred on a large number of other companies within a wide range of industries, 2) SOMISA was not a predominant user of the benefits because SOMISA's use of the benefits was not atypical, 3) SOMISA did not receive a disproportionate share of the total benefits, as several other companies received a significantly larger share of the total debt assumption. Also, Siderar asserts that several industries received a much higher share of the total debt assumed than the steel industry, and thus, relative to other companies and industries SOMISA's debt assumption and the steel industry's debt assumption were substantially smaller, and 4) the GOA verification shows that SOMISA did not receive favorable discretionary treatment in any benefits conferred during the privatization (referring to Government Verification Report at Exh. G-8 and G-9).

Finally, Siderar argues that there is "integral linkage" under 19 CFR 351.502(c) between Decree 1144/92 and Law 23,696, as Decree 1144/92 simply implements Law 23,696 for the privatization of SOMISA. Siderar asserts that the company-specific decrees were not separate programs that need to be linked to Law 23,696, but were instruments through which Law 23,696 was implemented.

Siderar counters the petitioners' assertion that there is a per se specificity rule with respect to widespread capital programs. Siderar argues that the statute, the Department's regulations, and case precedent make clear that there are no per se rules in the specificity analysis. Siderar asserts that the Department's practice has been to consider not only whether the enabling legislation contains language which explicitly limits the availability of the benefit to certain enterprises, but also whether those certain enterprises constitute a small number of enterprises, industries, or group thereof. Siderar contends that the petitioners' citations to previous cases do not support their allegations. Further, Siderar argues that the specificity analysis in Argentina Hot-Rolled Prelim was based on "facts available," and accordingly, the Department should not rely on that determination.

Furthermore, Siderar claims that the petitioners' de facto analysis is flawed in three respects: 1) it inappropriately attempts to apply a GDP-to-benefit ratio analysis from a previous case to the current investigation; 2) even if that GDP analysis were appropriate, the petitioners base their analysis on incorrect comparisons and false assumptions; and 3) even if the Department ignores these fundamental errors and assumes that the ratios contrived by the petitioners are correct, the data provided by Siderar and GOA outweigh any evidence of de facto specificity.

Finally, Siderar claims that the petitioners' GDP analysis is misguided because it ignores the Department's regulations. The Department, according to Siderar, is directed to first determine if

the number of actual users is limited and, if the number of users is not small, then it will proceed to examine whether one enterprise or industry is a predominant or disproportionate user of the subsidy. Siderar contends, even if the Department were to focus only on the debt assumptions occurring in 1992 (which it argues against), the petitioners' analysis overstates the steel industry's share for that year because of errors in their supporting table. Siderar argues that the steel industry's share of the total benefits for 1992 was still very small.

Department's Position: The benefits at issue here are the debt forgiveness and various other subsidies under Decree 1144/92 (i.e., stamp tax exemption, VAT exemption, assumption of environmental liabilities, assumption of voluntary retirement/severance liabilities). Regarding the debt forgiveness and VAT exemption (an exemption from the tax on the transfer of assets), we find that any benefit from these events occurred at the time the assets were transferred to APSA, an event which took place prior to the sale of shares in APSA to Propulsora (see Comment 7 for discussion of the VAT exemption). Consequently, we find that any benefits from these events accrued to SOMISA/pre-privatization APSA. Also, regarding the assumption of voluntary retirement/severance liabilities, for the reasons stated in Comment 9 below, we find this to be a benefit to SOMISA. As stated in the "Change in Ownership" section above, we find that SOMISA/pre-privatization APSA and respondent Siderar are not the same person. Accordingly, these subsidies, because they were provided to SOMISA/pre-privatization APSA, are not attributable to Siderar.

Regarding the stamp tax exemption, for the reasons stated in Comment 8 below, we find this to be a benefit to the purchaser of APSA, and not to APSA itself. Accordingly, these benefits are also not attributable to Siderar.

Finally, regarding the assumption of environmental liabilities, for the reasons stated in Comment 10 below, we find no subsidy because no environmental liabilities were actually assumed.

Becasue we have found that these alleged subsidies are attributable to entities other than Siderar or are non-existent, we do not need to address the issue of whether they are specific.

Comment 4: Reintegro

Petitioners' Argument: The petitioners argue that Reintegro benefits are countervailable in full because the program "as a whole" does not meet the requirements of 19 CFR 351.518(a)(4)(i)-(ii). The petitioners claim that the GOA has not established a reasonable and effective system, and has not conducted a satisfactory examination to determine "on a program-wide basis" which inputs are consumed in the production of the exported products and in what amounts, and which indirect taxes are imposed on these inputs.

In support of their position, the petitioners cite to Final Affirmative Countervailing Duty Determination: Honey from Argentina, 66 FR 50613 (October 4, 2001), and accompanying Issues and Decision Memorandum at "Programs Determined to Confer Subsidies: Federal

Programs - Argentine Internal Tax Reimbursement/Rebate (Reintegro)" ("Argentina Honey"). In Argentina Honey, the petitioners argue, the Department found that the GOA has not instituted a reasonably effective system that meets the standards of 19 CFR. 351.518(a)(4)(i) because the system failed to show that the rebates were based strictly on prior-stage cumulative indirect taxes on inputs physically consumed in production. The petitioners see no evidence in the instant record which contradicts that finding. Thus, the petitioners conclude that Reintegro "as a whole" fails to meet the standard for non-countervailability.

Even if the Department finds that the GOA does have a system in place, the petitioners argue that the Reintegro rebate is excessive and, thus, countervailable. The petitioners contend that Siderar's tax incidence study significantly misrepresents its actual allowable tax incidence because it includes taxes on inputs not consumed in production, direct taxes, taxes that are not prior-stage, or fees and charges that are not taxes at all. When adjusted for these "errors," the petitioners maintain, the study actually shows that Siderar's tax incidence is well below the 7.5 percent Reintegro rebate rate.

The petitioners identify the following problems with respect to Siderar's tax incidence study. First, the petitioners stress that, in aligning the regulations with the Agreement on Subsidies and Countervailing Measures' change in the standard from "physical incorporation" to "consumed in production," the Department did not intend to expand significantly the range of border adjustments (citing to the SAA, at 915 and the 1998 CVD Regulations, 63 FR at 65348). The petitioners point to the Department's past practice in delimiting what is considered "consumed in production" (citing to Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Oil Country Tubular Goods From Argentina, 49 FR 46564, 46566 (November 27, 1984) (and its subsequent reviews) ("Argentina OCTG") and Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review, 62 FR 728 (January 6, 1997) ("Thai Ball Bearings"). In Argentina OCTG, the Department examined the Reembolso, the predecessor to the Reintegro, and disallowed such inputs as refractory bricks as merely being "worn away" but not "physically incorporated" in production. In Thai Ball Bearings, where the Department addressed many of the same items as in the instant proceeding, the Department disallowed grinding wheels, drill bits, and other inputs that only "touch," but are not physically incorporated into, the product.

The petitioners dispute the inclusion in the incidence study of taxes on several items they do not consider to be "consumed in production," including taxes on items identified variously as services, supplies, expenses, or labor. The petitioners claim that the Department has consistently found in past investigations that labor cannot be considered to be consumed in production. Services, the petitioners note, are analogous to labor and, therefore, cannot be consumed in production either. Refractories, say the petitioners, were specifically disallowed in Argentina OCTG, while Thai Ball Bearings also specifically disallowed process supplies, other sundry supplies, and rolling cylinders. The petitioners contend that, even if the Department were to consider any of the above inputs as consumed in production, the tax incidences on these inputs include direct taxes for which the calculation should be adjusted.

Second, the petitioners discuss other tax incidence items that they believe are not, by definition, allowable. They cite to Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review, 60 FR 4596 (January 24, 1995) ("India Metal Castings"), in which the Department disallowed "port taxes," "harbor taxes," and other items that, absent reliable verification information, the Department considered to be service charges improperly defined as taxes. Citing to Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Preliminary Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 5151 (February 10, 1984), the petitioners contend that taxes on "labor," "indirect expenses" such as electricity and natural gas, and "salary" taxes have consistently been disallowed by the Department.

In this investigation, the petitioners seek to exclude various taxes presented in Annex 21 of Siderar's tax incidence survey which they contend are direct taxes. The petitioners claim that the effect of these taxes is pervasive, since they underlie various other categories of tax incidence. The petitioners also dispute various taxes related to freight.

Third, the petitioners object to the inclusion of various items they consider to be either "non-taxes" or not prior-stage taxes. Citing to India Metal Castings, the petitioners claim that the Department examined similar items in that proceeding and found them to be service charges, not taxes. Even if the Department should consider these to be indirect taxes, they are not prior-stage taxes but final stage taxes imposed in connection with exportation. Such taxes, the petitioners claim, do not qualify under 19 CFR 351.518.

With appropriate adjustments, the petitioners argue, that Siderar's actual tax incidence exceeds the amount of the Reintegro rebate and, thus, countervailable.

Finally, the petitioners argue that 19 CFR 351.526 allows the Department to consider program-wide changes when setting the cash deposit rate. However, the petitioners contend, the reported Reintegro change under Resolution 56/2002 (which lowered the rebate rate from 7.5 percent to 3.5 percent as of February 8, 2002) fails the requirements of this regulation. In particular, according to the petitioners, Resolution 56/2002 does not specifically mention the Reintegro program by name and is only a provisional measure aimed at Argentina's current fiscal problems. Consequently, the petitioners argue that the Department should ignore the change.

Respondent's Argument: Siderar argues that Reintegro benefits are not countervailable in full because the GOA has an effective system in place which confirms the cumulative, prior-stage, indirect taxes on inputs consumed in production. Siderar counters the petitioners' reliance on Argentina Honey by arguing that the Department's decision in that proceeding was based on facts limited to the honey sector and irrelevant to the Reintegro program for the cold-rolled steel industry.

In fact, Siderar points out, in proceedings involving Reintegro in the steel sector, the Department has consistently found the GOA to have a reasonable system in place. Likewise, for the POI,

Siderar argues, the GOA has applied the same reasonable system to establish an appropriate rebate level (citing to Cold-Rolled Carbon Steel Flat-Rolled Flat Products From Argentina, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 10886, 18009 (April 26, 1984) and the subsequent review proceedings). In these proceedings, according to Siderar, the Department found that the rebate programs satisfied the regulations, and also found no countervailable over-rebate.

Siderar also states that the Department found the rebate program in Argentina Honey (then called the Reembolso) to be fully countervailable, because the GOA faced a highly dispersed and disjointed market structure, and thus lacked reliable specific information on actual production. That situation, Siderar claims, does not exist for the steel industry where the program is supported by a study based on actual production information. Thus, according to Siderar, the rationale for countervailing the rebate in Argentina Honey is absent in this investigation.

Siderar acknowledges that the Department faulted the GOA's system for administering the programs, particularly in regard to evidence supporting prior-stage tax incidence, in Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Certain Welded Carbon Steel Pipe and Tube Products from Argentina, 53 FR, 37619, 37625 (September 27, 1988) ("Welded Pipe") and in Certain Apparel from Argentina; Final Results of Countervailing Duty Administrative Review, 54 FR 22467 (May 24, 1989). However, the GOA subsequently made improvements in the system, taking the Department's concerns in these proceedings into account. In particular, the GOA implemented these improvements in cold-rolled steel by using tax incidence information from the Argentine Steel Industry Chamber ("Steel Chamber") to corroborate prior-stage tax incidence in Reintegro. Siderar notes that, since Welded Pipe, the Department has affirmed the reliability of the Steel Chamber information with regard to both prior-stage and final-stage tax incidence (citing to Standard Pipe and Line Pipe from Argentina; Final Results of Countervailing Duty Administrative Reviews, 56 FR 29946, 29947 (July 1, 1991). As a result of these improvements, Siderar claims that the Department has never found the rebate system in cold-rolled steel to be deficient and that the record evidence in the instant investigation merits the same conclusion. Unlike in Argentina Honey, Siderar contends, the Department in this case confirmed that the rebate level was based on the actual production experience of an actual producer/exporter of the subject merchandise and corroborated by the study performed by the Steel Chamber ("Steel Chamber Study").

Siderar argues that, having ignored the Steel Chamber Study, the petitioners erred in their recalculation of the tax incidence. Specifically, Siderar defends the tax incidence represented in Annex 21, saying this reflects the general level of indirect taxation in Argentina. The Department, notes Siderar, has not only verified the substance of the tax incidence studies, but also the GOA procedures which the Department has approved in the past. Thus, there is no reason for the Department to reverse its preliminary finding that the GOA has an effective system in place.

Finally, Siderar argues that the program-wide change took place after the POI, was officially

enacted by the GOA under Resolution 56/2002, and was not limited in scope to one company or industry. Siderar also claims that the change was verified by the Department, and that the lower rate reflects the prevailing level of rebate. Thus, Siderar contends that the Department is bound to take the change into account for the purpose of establishing the estimated countervailing duty cash deposit rate.

Siderar rebuts petitioners' contention that the incidence study includes non-allowable instances of tax incidence, contending that the petitioners made three major errors in their review of the survey: 1) gross income or "turnover" taxes are allowable; 2) taxes on freight are allowable; and 3) final-stage taxes are allowable.

Siderar claims that the gross income tax, or what the Department has referred to the as the "turnover tax" in past proceedings, is a classic indirect tax based on sales revenue. As such, it is a cascading indirect tax because it is not rebatable at each stage of the process and has a cumulative effect on prices up the chain of production and distribution. The Department has allowed this tax as rebatable indirect tax in past proceedings, specifically in Welded Pipe. Also typically accepted by the Department, Siderar argues, are taxes on freight which are related to the acquisition of materials or the transfer of the final product. This is because the price of material purchased at a delivered price includes the indirect taxes on freight.

Regarding final-stage taxes, Siderar notes that the Department has in the past accepted taxes on final stage freight as indirect taxes on the final product for export and not subject to the physical incorporation standard. Likewise, according to Siderar, the Department has in the past accepted taxes on "third party services" as taxes on the acquisition of the finished product packed for export (such as turnover, bank debit and municipal taxes, and not as taxes on the services of a finisher). Siderar claims that the Department has also always treated tax on export freight as a final-stage indirect tax, and thus the petitioners are wrong to disallow it in their analysis.

Department's Position: In the Preliminary Determination, we found that the Reintegro program was not countervailable because the GOA has appropriately examined the actual inputs involved in the production of the subject merchandise. 67 FR at 9672-73.

In their case briefs, the petitioners essentially argue that the determination in Argentina Honey regarding the Reintegro program as it applies to the honey industry, is a determination that should be applied to all industries. We do not agree. In examining a system, we look at whether the program takes into account only the cumulative, prior-stage indirect taxes for the industry under investigation. Because each industry is different and has different cost structures, it would be impossible to have one system to account for the indirect costs of all industries. In recognition of this fact, the Department has consistently examined these types of programs on an industry-by-industry basis. The finding of no system in Argentina Honey was based on a finding specific to the honey industry. This was not a blanket finding for every industry (i.e., having no system for the honey industry does not mean that every other industry in Argentina does not also have a system). Instead, we must examine, independently, whether as system is in place for the

steel industry.

As we stated in the Preliminary Determination, in previous steel cases, the Department determined that, for the steel industry, the GOA does carry out an appropriate examination of actual inputs to confirm which inputs are consumed in the production of the exported steel products. See, e.g., Cold-Rolled 1984 (and subsequent reviews) and Argentina OCTG (and subsequent reviews). Accordingly, for the final determination, we continue to find that the GOA has a system in place that appropriately examines the actual inputs involved in the production of the subject merchandise.

In the Preliminary Determination, we also found that Siderar's actual incidence of indirect tax did not exceed the Reintegro rebate rate. Id. For the final determination, in light of arguments offered by the petitioners and Siderar, we reexamined the tax incidence schedules submitted by Siderar, and made adjustments. These adjustments included the exclusion of 1) those inputs not "consumed in the production" of the subject merchandise and 2) indirect freight taxes. We continue to find allowable final stage taxes and other fees and expenses that the petitioners deem "direct taxes." We explain further below.

Regarding the exclusion of those items not "consumed in the production" of the subject merchandise, 19 CFR 351.102(b) defines "consumed in the production process" as "inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product." We agree with the petitioners that taxes on labor and on certain items that are not consumed in the production of the subject merchandise should be excluded from the calculations.

Regarding the exclusion of the indirect freight taxes, we do not agree with Siderar. In its tax incidence survey, Siderar included the indirect taxes incurred by the transporter on the tansporter's "inputs." We find this not to be the same as an indirect tax on the freight on the input itself. On the other hand, we agree with Siderar that, to the extent that an indirect tax was paid *directly by Siderar* on the transportation of the input, we would find this an allowable final stage tax (see discussion of final-stage taxes below). However, contrary to Siderar's arguments, from examination of Siderar's tax incidence survey, it appears that the only indirect taxes included were cumulative, prior-stage, indirect taxes *for the transporter*. Accordingly, we have excluded entirely these taxes from the calculation of Siderar's incidence of cumulative, prior-stage, indirect tax.

Regarding final stage taxes, we find that 19 CFR 351.317 provides the proper analysis for these taxes (and not 19 CFR 351.518). Under 19 CFR 351.102(b), an indirect tax is defined as a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge. Under 19 CFR 351.517(a), in the case of the remission upon export of indirect taxes, a benefit exists to the extent that the amount remitted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Therefore, we find the final stage taxes are

rebatable, and examined only whether the rebate rate exceeded Siderar's actual final stage (and cumulative, prior-stage, under 19 CFR 351.518) indirect taxes.

Regarding the fees and expenses, we do not agree with the petitioners' reliance on Indian Metal Castings for the proposition that "port taxes" and "harbor taxes" should be considered "service charges" and, thus, not rebatable in this case. In Indian Metal Castings, while we did make this statement, the taxes referred to were on the import of the respondent's inputs, and not the taxes levied upon export. The former would not be allowed (as in Indian Metal Castings), while the latter would be allowed as a final-stage tax. Therefore, in this case, we have not excluded (because they are final-stage taxes) similar taxes from the calculations.

Based on the above, we find that the Reintegro rate in place during the POI exceeded Siderar's actual cumulative, prior-stage, indirect tax and final stage tax.

However, we also find that a program-wide change occurred subsequent to the POI and before the preliminary determination in this investigation (i.e., on February 8, 2002), as required in 19 CFR 351.526(a)(1). Second, Resolution 56/2002 lowered the Reintegro rate by fifty percent (which reduced the rate from the then existing seven percent to 3.5 percent) and, thus, provided the measure of the change, as required under 19 CFR 351.526(a)(2). Finally, the reduction in the Reintegro rate affected all companies and was effectuated by an official act, as required in 19 CFR 351.526(b)(1) and (2).

Regarding the petitioners argument that we should not take the program-wide change into account because the law allowing for the change does not specifically mention the Reintegro program, we disagree. Resolution 56/2002 clearly applied export rebates. See Siderar Verification Report at Exh. S-10-d. Because Reintegro is an export rebate program, we find that it was affected by this Resolution. There is no requirement that the law specifically mention the program names which are affected by the change.

We also disagree with the petitioners that this change is only provisional in nature and, thus, we are precluded from taking the change into account. There is no evidence on the record that this program-wide change is only provisional. Although the GOA does state that the reduction in the Reintegro rate was due to the financial situation in Argentina, Resolution 56/2002 does not indicate that once the financial situation improves, the Reintegro rate will revert to the old rate. Moreover, even if the reduction were provisional, nothing in the our regulations requires that a program-wide change can not be provisional. If the rate does revert to the old rate, the petitioners can request a changed circumstances review pursuant to 19 CFR 351.216.

Based on the above, we find that Reintegro rate after the preliminary determination is 3.5 percent. We also find that this new Reintegro rate does not exceed Siderar's actual incidence of cumulative, prior-stage, indirect tax and final stage tax.

Comment 5: Committed Investment

Petitioners' Argument: The petitioners contend that, because the GOA required a $100 million investment over a two-year period after the sale of APSA, APSA was sold at a substantial discount and, therefore, a countervailable benefit was conferred. The petitioners note that, while there is ambiguity on the record as to which entity (the purchaser (Propulsora) or the purchased company (APSA)) had to make the required investments, either way the existence of a countervailable benefit is clear.

In the first scenario, the petitioners argue that record evidence indicates that Propulsora agreed to make, and did make, investments totaling $100 million into APSA or on APSA's behalf. Thus, according to the petitioners, Propulsora used money which it would otherwise have handed to the GOA to buy steelmaking equipment for APSA (resulting in a benefit to APSA).

Alternatively, the petitioners argue that if APSA itself had to make the investments, a benefit was conferred on APSA because it constrained Propulsora's ability to extract money from APSA through dividends. Moreover, the petitioners contend that the committed investment was designed to improve production, while keeping the public welfare in mind. According to the petitioners, public welfare "in this context can only have meant one thing: maintenance of employment and expanded production, through the enforced funneling of economic resources into a sector of the economy when market signals would otherwise have steered those resources elsewhere."

No matter which entity was required to make the investments, the petitioners contend that the transaction resulted in a countervailable subsidy. The petitioners argue that there are three ways of viewing the transaction as a financial contribution under section 771(5)(D) of the Act: 1) by accepting a reduced purchase price, the GOA forewent revenue otherwise due; 2) the GOA sold APSA for less than adequate remuneration; and 3) the GOA entrusted or directed a private entity to provide and indirect subsidy with respect to the manufacture of the subject merchandise.

The petitioners contend that government action caused these investments to take place - by directing the $100 million investment, selling at a reduced price, and providing a guarantee for undiscovered liabilities. The petitioners argue that the Department recently countervailed a similar committed investment in Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Countervailing Duty Administrative Review, 66 FR 14549 (March 13, 2001) and accompanying Issues and Decision Memorandum, at "Discussion of Analysis of Programs: Committed Investment" ("2001 Mexican Plate"). The petitioners assert that the Department also found the committed investment at issue here to confer a countervailable benefit in Argentina Hot-Rolled Prelim and accompanying Issues and Decision Memorandum at Comment 6. Finally, the petitioners contend that the benefit conferred through committed investment is specific, as defined by section 771(5A) of the Act, because the benefits were limited by law to group of industries or enterprises.

Respondent's Argument: Siderar counters that the committed investment was not a countervailable subsidy because no financial contribution was made. First, Siderar argues that

GOA officials explicitly confirmed at verification that the committed investment requirement was independent of the price to be paid. Therefore, according to Siderar, the petitioners' assertion that the GOA accepted a reduced purchase price, thereby foregoing revenues, is not factually supported. Second, Siderar argues that the sale was not made for less than adequate remuneration because the base price was objectively determined in a transparent bidding process.

Third, Siderar argues that the GOA did not entrust or direct Propulsora to make investments into APSA. Siderar contends that the petitioners warp the reality of private investor practices by focusing on this one $100 million investment commitment. Siderar argues instead that the committed investment was part of a much larger investment program, which was funded by the privatized company's own funds and borrowings, and with the involvement of several international lenders. According to Siderar, the petitioners' equating of public welfare with maintenance of employment is misguided because the employment at SOMISA already had been reduced by about 50 percent, even before further reduction under private ownership - something hardly inconsistent with private investment behavior.

Finally, Siderar argues that the record establishes that almost all major privatizations in Argentina had committed investment or service requirements. Consequently, Siderar claims the committed investment is not specific pursuant to section 771(5A) of the Act and, thus, not countervailable.

Department's Position: We find that committed investments can become part of the purchase process in at least two situations: 1) where committed investment is offered by the purchaser and may be considered by the seller in selecting the winning bid or 2) where the seller requires the committed investment of any eventual purchaser.

The committed investment examined in 2001 Mexican Plate falls into the first category. There the government provided a bidding formula that assigned value to the post-sale investments. Moreover, under that formula, the situation could arise where the government rejected the bid with the highest payment to the government in favor of a lower price to the government and more committed investment.

The petitioners have suggested three possible theories for determining a financial contribution in this case: 1) revenue forgone; 2) provision of a good or service at less than adequate remuneration; and 3) an "entrusts or directs" standard. We have not determined which of these would be an appropriate basis for determining a financial contribution in the case of committed investment generally because we find that the facts of this case do not support a finding of a financial contribution on any of these bases.

In those situations where the seller accepts a lower payment than the payment offered by another bidder, we believe that the seller is foregoing revenue. Consequently, we would determine that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act. We also believe that the amount of revenue forgone would equal the difference between the highest

payment offered and the payment accepted by the seller.

Regarding the second category, in which the seller requires the committed investment, we do not believe that a benefit exists when the committed investment is made by the company itself (as opposed to the purchasers of the company) and when the investment made would have been made even absent the requirement to make the investment.

In this investigation, the GOA notified any eventual purchaser in the bidding terms that the privatized company would be required to invest $100 million over the two years following the sale. The bid terms outlining the committed investment requirement clearly state that "qualified applicants should bear in mind that {APSA} is to make investments... in an amount not under 100 million U.S. dollars for the first two years as from the date of taking possession." See Siderar QR, at Exh. 12. Moreover, at verification, officials confirmed that it was indeed APSA that was required to make the investment, and not the purchaser. See Government Verification Report at 4-5. Therefore, despite the petitioners' argument that there is confusion over whether Propulsora or APSA had to make the committed investment, we find that it was APSA that had to make the investment.

Regarding the revenue forgone argument, we find that the GOA, in laying out the bidding process in the bid terms, stated that it would accept the highest bid. See Siderar QR, at Exhibit 12 (bid terms at section 7). Because Propulsora was the only bidder, we find that the GOA did, in fact, accept the highest bid. Therefore, based on the bidding process, there is no evidence that the GOA failed to receive any revenue it would otherwise receive.

Nor is there any evidence that Propulsora held back any payment that it otherwise would have made to the GOA. Although the GOA did require the investment, it did not specify the nature of the investments. According to bid terms, any costs incurred to meet environmental and/or worker safety goals could be used to satisfy the committed investment requirement. However, nothing in the bid terms *required* the company make the committed investment into any environmental or worker safety objectives. Instead, the company could have made the investments in anything it chose. At verification, we found that, in fact, APSA over the two years after its purchase, invested in itself more than $100 million and that, over a longer period, over $400 million was invested into APSA. See Siderar Verification Report at 14. Because the amount invested exceeded the committed investment that was required, this indicates that requirement was not a meaningful condition of the sale. Instead, it appears that APSA would have made the investment even absent the requirement.

Regarding the less than adequate remuneration argument, pursuant to section 771(5)(E) of the Act, adequacy of remuneration is determined in relation to prevailing market conditions for the good being provided. In this case, if we assume that APSA is the "good" being sold, we would have to determine what the prevailing market price would be for a company like APSA. Here, while we do not have the prevailing market price for a company like APSA, we do have the market valuation prepared by the independent company, Salomon Brothers, of APSA prior to its

sale. Because Propulsora paid more than the independently determined value (as noted in the "Change in Ownership" section above), and because there is no other evidence on the record indicating that less than adequate remuneration was paid, we find that the GOA did not sell APSA for less than adequate remuneration.[2]

Regarding the "directs or entrusts" argument, because the invested funds were from the retained earnings or borrowings of APSA/Propulsora, and were not received from the owners of the company (see Siderar Verification Report at 14-15), we determine that no financial contribution was received by APSA from its purchasers (see Comment 8 below for a discussion of the distinction between owners and the company).

Comment 6: Equity Infusions

Petitioners' Argument: The petitioners contend that, as the Department found in prior proceedings, the equity infusions provided by the GOA to the cold-rolled steel industry are countervailable as financial contributions that conferred a specific benefit. According to Siderar, the Department, in the Preliminary Determination, incorrectly re-amortized these subsidies such that they no longer provide a benefit in the POI.

Respondent's Argument: Siderar did not comment on this issue.

Department's Position: SOMISA received various equity infusions prior to 1991. However, as stated in the "Change in Ownership" section above, we find that SOMISA/pre-privatization APSA and respondent Siderar are not the same person. Therefore, we find that any potential benefits from these equity infusions are not attributable to Siderar.

Comment 7: Exemption from Value Added Tax on Transfer of Assets

Petitioners' Argument: The petitioners argue that the VAT tax exemption conferred during the transfer of SOMISA's valuable steelmaking assets to APSA is a countervailable subsidy. According to the petitioners, this tax exemption qualifies as a financial contribution under section 771(5)(D)(ii) of the Act and confers a benefit upon APSA under section 771(5)(E) of the Act. The petitioners also argue that the tax exemption is specific, as defined by section 771(5A) of the Act, because it was limited to an industry or enterprise or group thereof. The petitioners contend that the GOA was unable to document that the benefits were evenly distributed. The petitioners argue that, as in Argentina Hot-Rolled Prelim, this subsidy is amortizable because it relates to capital assets.

Respondent's Argument: Siderar counters that the VAT tax exemption is not countervailable for

[2] We also note, importantly, that our finding of a different person in this case is not based on the payment of fair market value in the privatization sale. Instead, as stated above, our finding is based on the changes to the privatized company in conjunction with the sale.

two reasons: 1) any benefits were provided to SOMISA and, because Siderar is not the same person as SOMISA, no benefits were provided to Siderar; and 2) as argued under Comment 3 above, any such benefits were not specific under section 771(5A) of the Act.

Department's Position: At verification, we found that a VAT is due any time a transfer of assets takes place. See Siderar Verification Report at 18. In the privatization process of APSA, the transfer of assets took place while both SOMISA (the former owner of the assets) and APSA (the new owner of the assets) were both government owned. In other words, the transfer of assets took place prior to the privatization of APSA. Thus, any VAT tax that would have been due would have been paid by the owners of APSA (i.e., the GOA) prior to the privatization. However, as stated in the "Change in Ownership" section above, we find that SOMISA/pre-privatization APSA and respondent Siderar are not the same person. Therefore, any benefit from the exemption of the VAT tax is not attributable to Siderar.

Comment 8: Exemption from Stamp Tax

Petitioners' Argument: The petitioners contend that the stamp tax exemption received by APSA constituted a financial contribution because the GOA waived the tax. In addition, the petitioners argue that the benefit was specific because 1) the exemption was limited by Decree 1144/92 to APSA and 2) even if the subsidy was part of a broader program of privatization-related aid under Law 23,696, the program is de jure specific because it was limited to an industry or enterprise, and the benefits are concentrated in a group of enterprises accounting for only a small percentage of the Argentine economy. By correcting the AUL error, as argued by the petitioners in Comment 1 above, they contend that this program provides a benefit to Siderar in the POI.

Respondent's Argument: Siderar contends that, as argued in Comment 2 and 3 above, no benefits were conferred on Siderar during the privatization because: 1) Siderar is not the same person as the pre-sale person; and 2) any such benefits were not specific under U.S. law or the WTO.

Department's Position: The stamp tax is due whenever a sale of shares takes place. Id. at 18. However, pursuant to the general privatization law (Law 23,696), all privatization transactions were exempt from the stamp tax under Decree 1105/89. Government Verification Report at 10. The stamp tax percentage is one percent, which, according to officials, is typically divided equally between *the seller and the purchaser* (i.e., each party would pay 0.5 percent). Siderar Verification Report at 18.

It is the Department's practice to find that owners of a company are distinguishable from the company itself. See, e.g., Results of Redetermination Pursuant to Court Remand in Allegheny Ludlum (in which the Department explains the focus of its change in ownership analysis. "[W]e believe that the proper focus of our inquiry should {be} the producer of the subject merchandise..., and not the owners of that producer." "The distinction between companies and their owners — between producers and investors — is the cornerstone on which the company

law of industrialized countries has been built." "In a {countervailing duty proceeding, it is the company (i.e., the producer of the subject merchandise) that is subject to investigation, not the owners.").

Accordingly, we find that any benefits from the exemption of the stamp tax are attributable to the sellers and purchasers (i.e., owners) of APSA. Therefore, no benefit is attributable to APSA and, thus, Siderar.

Comment 9: Assumption of Voluntary Retirement/Severance Liabilities

Petitioners' Argument: The petitioners contend that the GOA's assumption of worker retirement/severance liabilities is countervailable because it is a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit under section 771(5)(E) of the Act, because it relieved SOMISA/APSA of a liability. According to the petitioners, this benefit was specific, as defined by section 771(5A) of the Act because 1) it was provided under Decree 1144/92, the benefits of which were limited to APSA and 2) the benefits are de jure specific because the benefits are limited to an industry or enterprise or group thereof.

According to the petitioners, the respondents seek to avoid countervailability on the grounds that the money the GOA used to fund these payments had been borrowed by the World Bank. The petitioners assert that this argument is legally and factually untenable. Specifically, the petitioners argue that the respondents are attempting to mask this GOA subsidy as a "transnational subsidy" under section 351.527 of the Department's regulations. The petitioners argue that this regulation does not apply because the Public Enterprise Reform Adjustment Loans ("PERAL") Loans provided by the World Bank were not provided directly to APSA, but to the Argentine national bank, Banco de la Nacion. The petitioners further contend that the PERAL proceeds were provided to Banco de la Nacion in varying amounts not corresponding in any obvious manner with the severance payments. Even if the record showed a direct correspondence between the receipt of PERAL monies and the disbursement of severance payments on APSA's behalf, the petitioners contend that these funds were provided to the GOA as a loan, and therefore, it bore the economic burden of making these payments.

Respondent's Argument: Siderar argues that the Banco de la Nacion loan served as a "bridge loan" until the World Bank money was received under PERAL I and PERAL II. Siderar contends that the record clearly shows that loans provided under the PERAL program were tied directly to the World Bank's condition that the steel sector be privatized and the workforce be reduced. Siderar asserts that a World Bank Report shows that the PERAL funds were specifically provided to cover the Banco de la Nacion loan, directly linking the PERAL Loans and the bridge loan.

Department's Position: The GOA assumed certain voluntary retirement liabilities of SOMISA *prior to privatization* (i.e., severance payments to workers who voluntarily retired). See GOA Questionnaire Response, dated December 21, 2001, at 17. The GOA then requested funds from

the World Bank to make these severance payments. See Government Verification Report at 10. Consequently, assuming this is a benefit, it would be a benefit to SOMISA. However, as stated in the "Change in Ownership" section above, we find that SOMISA/pre-privatization APSA and respondent Siderar are not the same person. Therefore, any potential benefit to SOMISA is not attributable to Siderar.

Comment 10: Assumption of Environmental Liabilities

Petitioners' Argument: The petitioners argue that the GOA's assumption of potential liabilities for environmental claims conferred a benefit equal to the price Siderar would have had to pay, in 1993, for a private insurer to accept responsibility for the same set of potential environmental claims. According to the petitioners, it is irrelevant whether an actual claim arose. They further argue that, given Siderar's refusal to supply the necessary information to calculate this amount, the Department should rely on facts available. To this end, the petitioners suggest using a 1998 American Iron and Steel Institute study to find that the average "environmental control costs" for steel producers was 15 percent of operating costs. Using this percentage for Siderar's cost of sales, the petitioners conclude that Siderar's benefit would be 8.64 percent ad valorem.

Respondent's Argument: The respondents contend that the GOA's assumption of potential environmental liabilities did not confer any benefit, since no actual claims arose, and only "actual benefits" are countervailable under the statute and the Agreement on Subsidies and Countervailing Measures. Furthermore, the respondents argue that, even if this were found to constitute a benefit, it would have been extinguished by the FMV sale of APSA to Siderar, since the agreement to indemnify was included in the sales contract (for which Propulsora paid good consideration).

Department's Position: We verified that no environmental liabilities were actually assumed by the GOA. See Siderar Verification Report at 18; Government Verification Report at 9. With no benefits received, there is nothing to countervail. Moreover, we agree with the respondents that the assumption of these liabilities was a term of the contract for sale. Accordingly, it appears that the purchaser paid for this indemnification at the time of the sale.

Comment 11: Appropriate Discount Rate for Non-Recurring Subsidies

Respondent's Argument: Siderar argues that APSA and Propulsora were both creditworthy during the relevant period. Also, Siderar contends that the other three companies that formed Siderar (Aceros Revestidos, S.A., Bernal, S.A., and Sidercrom S.A.) have never been found to be uncreditworthy in any of the investigations or reviews of this product. Siderar asserts that there is no record evidence to suggest that Siderar or its member companies have been found to be uncreditworthy.

Petitioners' Argument: The petitioners argue that the Department has already made an uncreditworthiness finding for Siderar in Argentina Hot-Rolled Prelim and there is no legal

authority for the Department to alter its prior discount rate findings. The petitioners argue that Siderar would want the Department to use an alternative cost of funds for a time period after the bestowal of the subsidy. To do so, according to the petitioners, would violate a cardinal countervailing duty principle that subsequent events cannot determine the existence or amount of a subsidy. Finally, the petitioners argue, allowing established benefit streams to be recalculated on the basis of post-bestowal changes in the recipient's financial condition would require tracing, and countervailing, the subsidy's competitive effects rather than the subsidy itself.

Department's Position: As stated in the "Change in Ownership" section above, we find that SOMISA/pre-privatization APSA and respondent Siderar are not the same person. Any non-recurring subsidies alleged by the petitioners are attributable to SOMISA, and not Siderar. Therefore, because Siderar did not receive in 1992 any allocable non-recurring subsidies, loans, or loan guarantees that would require the use of a discount/interest rate for that year, we do not need to determine the appropriate rate to use for 1992 or what companies to examine in a 1992 creditworthiness analysis.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related subsidy calculations accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE _____ DISAGREE _____

_____
Faryar Shirzad
Assistant Secretary for
Import Administration

_____
Date